

LESLIE C. JONKEY

IBLA 70-668

Decided September 30, 1971

Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Extensions

Where a lease was issued prior to September 2, 1960, and a portion of the lands included in the lease is assigned during the single 5-year extension (formerly allowed under section 17 of the Mineral Leasing Act), then both the assigned portion and the retained portion continue in full force and effect for a minimum period of two years. Thus the 2-year extension may continue the leases beyond the end of the 5-year extension of the original lease.

Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Extensions

An oil and gas offer for lands covered by an oil and gas lease in its extended term because of partial assignments must be rejected, whether the extension is valid or not, because such lands are not open to filing until the cancellation or termination of the lease has been noted on the land office records.

IBLA 70-668 :

S 3803

LESLIE C. JONKEY

: Oil and gas lease
: offer rejected

Affirmed

DECISION

Leslie C. Jonkey has appealed to the Director, Bureau of Land Management, 1/ from a decision dated June 23, 1970, whereby the Sacramento land office of the Bureau rejected his noncompetitive oil and gas lease offer S 3803 filed pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1964).

Appellant's offer was filed May 26, 1970. It described the lands applied for as N 1/2 sec. 8, T. 22 S., R. 15 E., M.D.M., California. The land office rejected the offer on the grounds that the land applied for was not available for leasing because it was embraced in outstanding oil and gas leases S 062012-A and S 062012-B, which

... leases, dated July 1, 1960, were extended under 43 CFR 3128.5 [now 43 CFR 3107.6] to and including April 30, 1972, effective May 1, 1970, as the result of approval of partial assignment creating lease Sacramento 062012-B.

The record shows that effective as of July 1, 1960, sec. 8 T. 22 S., R. 15 E., M.D.M., California, was leased noncompetitively for a term of five years to Craig Martin and Darrell R. Peckman.

Effective as of August 1, 1960, the lessees, by a partial assignment approved on July 15, 1960, assigned the N 1/2 sec. 8 to B. Milo Mitchel, creating S 062012-A.

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Circular 2273, 35 F.R. 10009, 10012.

On July 21, 1965, lease S 062012-A was extended under section 17 of the Mineral Leasing Act for another 5-year term, ending June 30, 1970.

Effective as of May 1, 1970, B. Milo Mitchel, by a partial assignment approved on April 27, 1970, assigned the SE 1/4 NE 1/4 sec. 8 to Caryl C. Mitchel, creating S 062012-B. The decision of approval noted that leases S 062012-A and B were thereby extended under 43 CFR 3128.5 (now 43 CFR 3107.6) to and including April 30, 1972.

Appellant urges that the decision below be reversed and his offer allowed on the grounds that: (a) no oil and gas development work was performed on the leasehold; (b) the lease extension caused by the assignment is in essence a new lease because the lease extension was neither requested by, nor granted to, the original lessee(s); and (c) he has purchased the surface of the lands, 2/ has shown an interest in oil and gas development, and therefore should be afforded first consideration.

The appellant's contentions do not vitiate the conclusions reached below. The extensions were granted in conformity with law. Where, as in the instant case, an oil and gas lease was issued prior to September 2, 1960, and there is an assignment of part of the lands included in the lease during the single 5-year extension (formerly allowed under section 17 of the Mineral Leasing Act) and the assignment is timely filed 3/ and approved by the Department, 4/ then both the assigned portion and the retained portion continue in full force and effect for a minimum period of two years. Thus the 2-year extension may continue the leases beyond the end of the 5-year extension of the

2/ The appellant suggests that he owns the surface. The land has been patented. However, the oil and gas deposits, inter alia, were reserved to the United States under 43 U.S.C. §§ 291-301 (1964).

3/ See Franco Western Oil Company et al., 65 I.D. 316, 427 (1958), upheld in Safarik v. Udall, 304 F.2d 944 (D.C. Cir. 1962), cert. denied, 371 U.S. 901 (1962).

4/ "Section 30(a) of the Mineral Leasing Act authorizes an oil and gas lessee to assign his lease in whole or in part. That section provides that:

" . . . The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: Provided, however, That the Secretary

original lease. See section 30(a) of the Mineral Leasing Act, as amended, 30 U.S.C. § 187(a) (1958 5/); Solicitor's Opinion, 64 I.D. 135 (1956); Richard P. De Smet et al., A-27837 (October 29, 1958); Raymond J. and Harold J. Hansen et al., A-27503 (January 3, 1958); 43 CFR 3107.6-2 (formerly 43 CFR 3128.5(b)).

We need not treat appellant's arguments in detail because, even if they were correct, it is necessary for another reason to reject appellant's offer.

Even assuming, arguendo, that the 2-year lease extension may have been approved improperly, this would not help appellant. It has been a long-standing rule of this Department that land, covered by an oil and gas lease of record, is not open to the filing of oil and gas offers, despite the fact that the lease may be void or voidable. Bette M. Snyder, A-28362 (July 28, 1960); W. W. Priest, A-28319 (June 28, 1960); Duncan Miller, A-28008 (August 10, 1959), aff'd, Safarik v. Udall, supra note 3; Richard P. De Smet et al., supra. See Sarah Ann Christie, 3 IBLA 7 (1971); George E. Conley, 1 IBLA 227 (1971). Regulation 43 CFR

fn. 4 (Cont.)

may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision.'

"The Secretary's authority to disapprove the partial assignment of an oil and gas lease is strictly limited. He may disapprove the assignment only: (1) for lack of qualification of the assignee or sublessee (2) for lack of sufficient bond; or (3) in his discretion, because the assignment is of a separate zone or deposit under any lease or of a part of a legal subdivision [a quarter-quarter section]." Solicitor's Opinion, 76 I.D. 108, 109 (1969). None of the three reasons is alleged or is apparent in the instant case.

5/ The applicable provisions of section 30(a) may be found in the 1958 edition of the code. Section 30(a) was added to the Mineral Leasing Act by the act of August 8, 1946, c. 916 § 7, 60 Stat. 955; it was amended by the act of July 29, 1954, c. 644 § 1(6), 68 Stat. 585; it was also amended by the act of September 2, 1960, Pub. L. 86-705, § 6, 74 Stat. 790. However, the act of September 2, 1960, stated that "[t]he provisions of this section 6 shall not be applicable to any lease issued prior to the effective date of this Act." See S. Rep. No. 1549, 86th Cong., 2d. Sess. at p. 5.

Lease S 062012 was issued July 1, 1960. This was prior to September 2, 1960. Therefore, the act of September 2, 1960, did not preclude the granting of the extensions effected in the instant case.

Subpart 3112 (formerly 43 CFR 3123.9) now prescribes the means whereby lands in cancelled leases are made available for leasing. The procedure in that regulation would preclude issuance of a lease pursuant to appellant's offer even if we assume that the leases of record were subject to cancellation.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision is affirmed.

Frederick Fishman, Member

We concur:

Martin Ritvo, Member

Anne Poindexter Lewis, Member

